City of Redmond, Decision 8863-A (PECB, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2829, Complainant, vs. CITY OF REDMOND, Respondent.	CASE 17169-U-03-4445 DECISION 8863-A - PECB DECISION OF COMMISSION

Webster, Mrak & Blumberg, by *James H. Webster*, Attorney at Law, for the union.

Summit Law Group, by *Bruce L. Schroeder*, Attorney at Law, for the employer.

This case comes before the Commission on a timely notice of appeal filed by International Association of Fire Fighters, Local 2829 (union), seeking to overturn the findings of fact, conclusions of law, and order of dismissal issued by Examiner J. Martin Smith on February 4, 2005.[1] The City of Redmond (employer) supports the Examiner's decision. We affirm.

1 City of Redmond, Decision 8863 (PECB, 2005).

PROCEDURAL BACKGROUND

On February 4, 2003, the union filed an unfair labor practice complaint alleging the employer refused to provide the union with information and that the employer failed to bargain in good faith concerning promotions of bargaining unit members. On November 24, 2003, the union filed an amended complaint, adding an allegation that the employer failed to bargain in good faith when it bargained regressively on health insurance premiums and advanced proposals that the union could not readily understand.

STANDARD OF REVIEW

This Commission makes its own de novo conclusions and applications of law, as well as interpretations of statutes. We review the findings of fact made by our examiners to determine if they are supported by substantial evidence and, if so, whether they support the examiner's conclusions of law. *C-Tran*, Decision 7088-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Renton Technical College*, Decision 7441-A (CCOL, 2002). Findings of fact that are not challenged in a notice of appeal are considered "verities" on appeal. *Brinnon School District*, Decision 7210-A (PECB, 2001).

ISSUES

1. Did the employer engage in unlawful regressive bargaining concerning health insurance benefits?

2. Did the employer fail or refuse to bargain in good faith concerning promotions within the bargaining unit?

3. Did the employer refuse to bargain by failing or refusing to provide information requested by the union?

APPLICABLE LEGAL STANDARDS

All three of the issues to be decided in this case invoke the duty to bargain under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, so that the same basic standards apply to all three issues. A public employer has a duty to bargain with the exclusive bargaining representative of its employees, as follows:

> RCW 41.56.030 DEFINITIONS. . . .
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> (4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. . . .

The "personnel matters, including wages, hours, and working conditions" of bargaining unit employees are characterized as the mandatory subjects of bargaining under *City of Richland*, Decision 2448-B (PECB, 1987), *remanded*, 113 Wn.2d 197 (1989), and *Federal Way School District*, Decision 232-A (EDUC, 1977), citing *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958). An employer or union that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice, as follows:

> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:

> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> . . .
>
> (4) To refuse to engage in collective bargaining.

In determining whether an unfair labor practice has occurred, the totality of circumstances must be analyzed. *City of Mercer Island*, Decision 1457 (PECB, 1982); *Walla Walla County*, Decision 2932-A (PECB, 1988). The evidence must support the conclusion that the respondent's total bargaining conduct demonstrates a failure or refusal to bargain in good faith or an intention to frustrate or avoid an agreement. *City of Clarkston*, Decision 3246 (PECB, 1989). Inherent to the good faith obligation is the obligation of employers and unions to provide each other, upon request, with information needed by the requesting party for collective bargaining negotiations or contract administration. *City of Bellevue*, Decision 3085-A (PECB, 1989), *a'ffd,* 119 Wn.2d 373 (1992).

Regressive Bargaining

The union asserts that the employer failed to bargain in good faith concerning its contribution toward insurance premiums for dependents of bargaining unit employees. The union maintains that the proposal the employer submitted for interest arbitration reverted back to an initial offer made months earlier, and thus constituted regressive bargaining. The employer responds that its proposal was consistent throughout the bargaining and interest arbitration process, and that it never abandoned the percentage-based formula. Moreover, the employer contends regressive bargaining should not be found because there was significant agreement between the parties on other issues.

Regressive bargaining occurs when one party at the bargaining table in some manner evidences an attempt to make a proposal less attractive. For example, in *Columbia County*, Decision 2322 (PECB, 1985), the employer violated RCW 41.56.140(1) and (4) when it withdrew its total package proposal that contained a sick-leave cash-out proposal and substituted a new package that contained no provision for sick leave cash-out after the union rejected the employer's first total package.

In *City of Clarkston*, Decision 3246 (PECB, 1989), a union violated RCW 41.56.140(1) and (4) when it escalated its demands in interest arbitration. The examiner in that case first noted that interest arbitration is not a substitute for collective bargaining, but rather it is a substitute for economic activities, such as strikes and lockouts. The examiner then stated that full and frank communication was needed in the bargaining process leading up to interest arbitration so that timely explanation of proposals could assist in reaching an agreement between the parties.[2] Because the union failed to communicate with the employer its intention to change the comparables the union was relying upon, the union was found to have committed an unfair labor practice.

Here, the employer used outside consultants to look at its health program, and then shared the following proposal with the union:

- Year 2002 – employer would pay the entire cost of dependent premiums.
- Year 2003 – employees would pay 10 percent (so the employer would pay 90 percent) of the cost of dependent premiums.
- Year 2004 – employees would pay 20 percent (so the employer would pay 80 percent) of the cost of dependent premiums.

In an effort to explain the impact of its proposal, the employer gave the union a spreadsheet in September 2002 that estimated the dollar costs that would be paid by employees in 2003 and 2004, based on then-current actuarial projections of the future dependent premium costs. The employer was then willing to agree to lock in those projections as fixed employee costs for 2003 and 2004. The dollar amounts of employee contributions on that spread sheet equaled 10 percent and 20 percent of the actuarially-projected costs, but the union perceived the flat dollar amounts to be a substantially different proposal from the offer based on percentages and rejected the offer at that time. Although

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2 See also Skagit County, Decision 8746-A (PECB, 2006)(good faith requires parties to fully explain the consequences of a failure to reach an agreement).

the employer's negotiator was aware of the union's misunderstanding, the employer did not clarify its position to the union.

In anticipation of going to interest arbitration, the employer submitted a proposal that only included a percentage-based contribution plan for dependent premiums. The union characterizes that as a regressive proposal. Relying upon the Commission's decision in *Spokane County Fire District 1*, Decision 3447-A (PECB, 1990), the union urges that the employer failed to demonstrate a business necessity to revert back to its original proposal. The union also argues that the reversion disrupted the bargaining process, reasserted a proposal the employer knew the union would reject, and provided benefits less favorable than the fixed cost proposal.

Although the record supports a finding that the employer failed to clarify its proposal once it realized the union was misinterpreting the employer's intention, that alone does not constitute regressive bargaining under the totality of circumstances presented in this case. Parties often will disagree about the particular meaning of a proposal during collective bargaining negotiations, and they may or may not in all cases express those concerns during negotiations to bargain those differences to impasse.

In order for a party to regressively bargain in violation of RCW 41.56.140(1), the bad faith element must infect the collective bargaining process, such as bargaining in a manner to avoid reaching an agreement, and will normally not be based upon a single instance of the sort presented in this case. Simple disagreements or misunderstandings about the impact or implementation of a proposal will not by themselves satisfy the burden of proof. If a party realizes that one of its proposals regarding a mandatory subject of bargaining is misunderstood, and the misunderstanding is materially undermining the bargaining process, then it has a duty to attempt to clarify its proposal.

In this case, the employer maintained its percentage-based proposal throughout the bargaining and interest arbitration process. The September 2002 proposal only varied the point in time at which the percentages proposed earlier would be converted to dollar amounts, and would have provided no greater benefit to the employees if the actuarial projection turned out to be correct. The essence of the employer's proposal remained the same: The employees were being asked to pay 10 percent of the

dependent premiums in 2003 (then only a few months away) and 20 percent of those costs in 2004. Because the employer's basic proposal remained the same, regressive bargaining did not occur.

The evidence does not support that the employer acted to punish the union or to disrupt the bargaining process, which clearly distinguishes this case from *Columbia County*, Decision 2322, where there was clear evidence of retaliation, and from *Spokane County Fire District 1*, Decision 3447-A (PECB, 1990), where the employer drastically increased the gap between the parties by reducing its wage offer from 3 percent to 0 percent at the threshold of interest arbitration without any explanation or justification.

Good Faith Bargaining on Promotions

In July 2002, the union proposed rule changes concerning promotions. Most notably, the union proposed that the "rule of three" be replaced by a "rule of one" requiring that the promotion be offered to the highest-scoring candidate on an examination. In a letter dated August 19, 2002, the employer proposed to continue to utilize current procedures because there were inherent advantages in the civil service system. The union asserts that the employer did not bargain in good faith in regard to the issue of promotions. According to the union, the employer did not make counter-proposals, refused to give specific reasons for its position on promotional standards, and insisted on using labor-management meetings (rather than the negotiations for a successor collective bargaining agreement) to address the promotions issue.

The employer operates a civil service system, as required by state law, for both its law enforcement officers (under Chapter 41.12 RCW) and its fire fighters (under Chapter 41.08 RCW). While the employer has a duty to bargain in good faith concerning some matters that could be delegated to its civil service system, under *City of Yakima*, Decision 3503-A (PECB, 1990), *aff'd*, 117 Wn.2d 655 (1991), that does not preclude the employer from asserting a preference for the civil service approach, or from asserting the benefit of having a body of civil service precedents available for guidance. The employer asserts that the union's proposal would result in: (1) having separate systems for hiring people and promoting them; and (2) use of a grievance process that would be too time consuming and less consistent than civil service.

Although the employer maintained its position throughout bargaining, that does not warrant finding a breach of the good faith obligation. Instead, the record reflects that full and frank discussions were held on the issue of promotions, and does not support that the employer held to its position to avoid settlement. The employer had sincere reasons for not accepting the union's proposal, and principled opposition to a proposal does not equate to a refusal to bargain.

The evidence does not support that the employer insisted that the promotion proposal be addressed only outside of the collective bargaining process. As noted by the Examiner, the employer merely suggested that the union also discuss the promotions topic with employer officials knowledgeable about civil service. Such suggestions do not equate to an unfair labor practice.

Refusal to Provide Information

The union argues that the employer unlawfully refused to provide it with relevant collective bargaining information. The information at issue concerns a note passed between members of the Redmond Civil Service Commission and two meetings of that body. The union contends that the note and information about the meeting were necessary for it to evaluate whether it could place confidence in the civil service commission to oversee the promotion process.[3]

The civil service commission went into executive session twice during a May 15, 2002, public meeting. The second of those followed an open discussion of whether the then-current list of applicants for a "fire administrative assistant" position contained qualified candidates. The union maintains that Chief Examiner Ken Irons suggested the civil service commission should conduct a new oral board with additional criteria, and that he passed a note to the chairperson of the civil service commission during the public meeting. After the civil service body returned from executive

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3 For the union, a primary issue was whether the civil service body has undue dependence on a secretary-chief (who works in the employer's Human Resources Department and provides staff support for the civil service commission), which could prevent it from being an independent decision maker.

session and approved the creation of a new list, the union asked for the note that was passed and for information about what happened in executive session. The employer declined the request.

The duty to provide information that grows out of the duty to bargain relates only to information that is relevant to the collective bargaining process. In *Highland School District*, Decision 2684 (PECB, 1987), a complaint concerning a refusal to provide information was dismissed on the basis that the information request concerned litigation outside of the collective bargaining process. The union failed to meet its burden to establish that the information it requested was relevant to its collective bargaining relationship with the employer. The note and the civil service body actions that were the subject of the information request concerned a job classification outside of the bargaining unit represented by the union.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by Examiner J. Martin Smith are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

Issued at Olympia, Washington, the 24th day of April, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[SIGNED]

MARILYN GLENN SAYAN, Chairperson

[SIGNED]

PAMELA G. BRADBURN, Commissioner

[SIGNED]

DOUGLAS G. MOONEY, Commissioner